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| APPLICATION NO.         | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|---------------------|------------------|
| 10/658,562              | 09/08/2003  | Michael Gauselmann   | ATR-A-121-1P        | 3426             |
| 32566                   | 7590        | 01/28/2008           | EXAMINER            |                  |
| PATENT LAW GROUP LLP    |             |                      | COBURN, CORBETT B   |                  |
| 2635 NORTH FIRST STREET |             |                      |                     |                  |
| SUITE 223               |             |                      | ART UNIT            | PAPER NUMBER     |
| SAN JOSE, CA 95134      |             |                      | 3714                |                  |
|                         |             |                      | MAIL DATE           | DELIVERY MODE    |
|                         |             |                      | 01/28/2008          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                               |                     |
|------------------------------|-------------------------------|---------------------|
| <b>Office Action Summary</b> | Application No.               | Applicant(s)        |
|                              | 10/658,562                    | GAUSELMANN, MICHAEL |
|                              | Examiner<br>Corbett B. Coburn | Art Unit<br>3714    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 November 2007.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2-10 and 12-58 is/are pending in the application.  
 4a) Of the above claim(s) 2-10 & 12-17,20,21,23,25-53,57 and 58 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 18,19,22,24 and 54-56 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Examiner's Comment*

1. Examiner notes that many of the newly withdrawn claims depend from claim 1 – which has been canceled. Should Applicant decide to rejoin these claims at a later date, Applicant should pay particular care to assure that the dependency of these claims is properly amended.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 18, 19, 22, 24 & 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (US Patent Number 6,224,482) in view of Bueschel (*Lemons, Cherries & Bell Fruit Gum*, Royal Bell Books, 1995 page 85).

**Claims 18, 19, 24, 54, 55:** As noted in the previous office action, Bennett teaches the invention substantially as claimed, but fails to teach dynamically adjusting the percentage of wagers from the paid games to the free game pot depending on a level of the free game pot. Jackpots were adopted early in the history of the slot machine. In the 1920's, jackpots became popular. On page 85 of Bueschel's book, there is a copy of an advertisement from that period. It explains how jackpots were funded. A player put a coin in the slot & if the jackpot was not full, the coin went into the jackpot. If the jackpot was full, the coin either went into another jackpot (even in the 1920's, slot machine

designers knew the importance of making sure there was a full jackpot available to players before playing a jackpot game) or into the cash box. This was achieved through “well balanced shut-off gates”. (See paragraph 2.) Thus until the jackpot was full, one percentage (100%) of all wagers went into the jackpot. Once the jackpot was full, the well-balanced shut-off gates were closed & another percentage (0%) of all wagers went into the jackpot. This ensured that the jackpot filled quickly, thus attracting players) while making sure that the operator made money. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Bennett in view of Bueschel to dynamically change the percentage of the wagers devoted to the jackpot in order to ensure that the jackpot filled quickly, thus attracting players) while making sure that the operator makes money.

In the 1920's game designers did not have the technology to take a percentage of wagers less than 100% and assign it to the progressive jackpot. After all, a jackpot was a physical “pot” into which coins were placed. If a player placed a nickel in the slot, either the nickel went into the jackpot or it did not. It was impossible to split the nickel into pieces & place some of the pieces in the jackpot & some in the casino till.

Technology has advanced. A slot machine's jackpot is no longer a physical construct. It is a logical construct (i.e., an account) held in a computer's memory. A player's nickel can be divided any way that the casino desires since it is now represented electronically. Today, most progressive jackpots are funded by taking a portion of the player's wager that is less than 100% and assigning it to the progressive jackpot account in the casino's (or slot machine's) computers.

Clearly, it is within the level of ordinary skill to set the percentages going into the jackpot at any level desired —including less than 100%. Furthermore, since at least the 1920's practitioners of the art have been changing the percentages of wagers going into the jackpot based on jackpot level. (Any other criteria might be chosen if desired.) Certainly, using percentages other than 100% would yield predictable results. Examiner concludes that it would have been obvious to assign a percentage less than 100% to the free game pot.

**Claim 22:** Bueschel teaches a plurality of pots. The names of the pots (i.e., jackpot or free game pot) are immaterial and do not patentably distinguish over the prior art.

**Claim 56:** The machines described in Bueschel had two jackpots. When one was full, the gate was closed & the other jackpot filled. Thus the percentages were changed when it was judged that there was enough in one pot to fund play for that pot.

*Response to Arguments*

4. Applicant's arguments filed 13 November 2007 have been fully considered but they are not persuasive.
5. Applicant's arguments concerning the percentage of funds allocated to the pot are addressed in the rejection above.
6. Applicant states that the claimed pot is a "free game pot" and not a "jackpot". Whether it is called a jackpot or a free game pot is immaterial. The function (i.e., to accumulate money to award to a player) is the same in either case.
7. Applicant's argument that Bueschel teaches a mechanical game at that this means that Bueschel's teachings are not applicable to modern games is not persuasive. It is well known to

apply techniques & concepts from mechanical slot machines to modern games. It has long been considered obvious to update technology. Things mechanical become electro-mechanical and then computerized. This is the march of technology.

8. Furthermore, as Applicant's arguments make clear, Applicant seeks to address the same problem that faced the slot machine makers in the 1920's – how to fill a pot and stop adding money when the pot is judged to be full enough. Applicant and the slot machine makers of 90 years ago came to the same solution. We cannot conclude that the solution is novel merely because the people of the 1920's used the technology of the era to implement the solution and Applicant uses the technology of today to do the same thing.

*Conclusion*

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Corbett B. Coburn/  
Primary Examiner  
Art Unit 3714